

AMENDED IN SENATE JUNE 21, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2287**

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**Introduced by Assembly Member Chu**  
*(Coauthors: Assembly Members Huff and Koretz)*  
*(Coauthor: Senator Romero)*

February 22, 2006

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An act to amend Section 4600 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2287, as amended, Chu. Workers' compensation: acupuncture.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including acupuncture treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law requires the administrative director to adopt a medical treatment utilization schedule, as specified, that is required to address the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases.

This bill would define acupuncture treatment to mean treatment based upon these guidelines or, prior to the adoption of these guidelines, the specified guidelines published by the Council of Acupuncture and Oriental Medicine Association and the Foundation for Acupuncture Research, *including specified information*.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature hereby finds and declares all of  
2 the following:

3 (a) In order to encourage the more effective utilization of  
4 acupuncture and oriental medicine services, to provide California  
5 citizens a holistic approach, and to promote the health, safety,  
6 and welfare of the public, the Legislature created the  
7 Acupuncture Licensure Act as a framework to establish a  
8 profession that would provide these services.

9 (b) There are reports of shortages of qualified health care  
10 professionals who can address the needs of citizens who suffer  
11 from pain, work-related injuries, and other nonlife-threatening  
12 illnesses.

13 (c) The National Institutes of Health has adopted a Consensus  
14 Statement on Acupuncture, recognizing a need for utilizing  
15 acupuncture in the American system of health care.

16 (d) For these reasons and others, acupuncture has been a  
17 common and effective treatment for work-related injuries and  
18 should continue to be a medical treatment choice for injured  
19 workers.

20 SEC. 2. Section 4600 of the Labor Code is amended to read:

21 4600. (a) Medical, surgical, chiropractic, acupuncture, and  
22 hospital treatment, including nursing, medicines, medical and  
23 surgical supplies, crutches, and apparatus, including orthotic and  
24 prosthetic devices and services, that is reasonably required to  
25 cure or relieve the injured worker from the effects of his or her  
26 injury shall be provided by the employer. In the case of his or her  
27 neglect or refusal reasonably to do so, the employer is liable for  
28 the reasonable expense incurred by or on behalf of the employee  
29 in providing treatment.

30 (b) As used in this division and notwithstanding any other  
31 provision of law, medical treatment that is reasonably required to  
32 cure or relieve the injured worker from the effects of his or her  
33 injury means treatment that is based upon the guidelines adopted  
34 by the administrative director pursuant to Section 5307.27 or,  
35 prior to the adoption of those guidelines, the updated American

1 College of Occupational and Environmental Medicine's  
2 Occupational Medicine Practice Guidelines.

3 (c) As used in this division and notwithstanding any other  
4 provision of law, acupuncture treatment that is reasonably  
5 required to relieve the injured worker from the effects of his or  
6 her injury means treatment that is based upon the guidelines  
7 adopted by the administrative director pursuant to Section  
8 5307.27 or, prior to the adoption of those guidelines, as set forth  
9 in the "Acupuncture and Electroacupuncture: Evidence-Based  
10 Treatment Guidelines-August 2004" published by the Council of  
11 Acupuncture and Oriental Medicine Associations and the  
12 Foundation for Acupuncture Research, *and which shall include*  
13 *any subsequent updates of those guidelines, if those updates*  
14 *adhere to the same requirements and utilize the same criteria*  
15 *that have been, or may be, subsequently provided by the Rand*  
16 *Corporation.*

17 (d) Unless the employer or the employer's insurer has  
18 established a medical provider network as provided for in Section  
19 4616, after 30 days from the date the injury is reported, the  
20 employee may be treated by a physician of his or her own choice  
21 or at a facility of his or her own choice within a reasonable  
22 geographic area.

23 (e) (1) If an employee has notified his or her employer in  
24 writing prior to the date of injury that he or she has a personal  
25 physician, the employee shall have the right to be treated by that  
26 physician from the date of injury if either of the following  
27 conditions exist:

28 (A) The employer provides nonoccupational group health  
29 coverage in a health care service plan, licensed pursuant to  
30 Chapter 2.2 (commencing with Section 1340) of Division 2 of  
31 the Health and Safety Code.

32 (B) The employer provides nonoccupational health coverage  
33 in a group health plan or a group health insurance policy as  
34 described in Section 4616.7.

35 (2) For purposes of paragraph (1), a personal physician shall  
36 meet all of the following conditions:

37 (A) The physician is the employee's regular physician and  
38 surgeon, licensed pursuant to Chapter 5 (commencing with  
39 Section 2000) of Division 2 of the Business and Professions  
40 Code.

1 (B) The physician is the employee's primary care physician  
2 and has previously directed the medical treatment of the  
3 employee, and who retains the employee's medical records,  
4 including his or her medical history.

5 (C) The physician agrees to be predesignated.

6 (3) If the employer provides nonoccupational health care  
7 pursuant to Chapter 2.2 (commencing with Section 1340) of  
8 Division 2 of the Health and Safety Code, and the employer is  
9 notified pursuant to paragraph (1), all medical treatment,  
10 utilization review of medical treatment, access to medical  
11 treatment, and other medical treatment issues shall be governed  
12 by Chapter 2.2 (commencing with Section 1340) of Division 2 of  
13 the Health and Safety Code. Disputes regarding the provision of  
14 medical treatment shall be resolved pursuant to Article 5.55  
15 (commencing with Section 1374.30) of Chapter 2.2 of Division 2  
16 of the Health and Safety Code.

17 (4) If the employer provides nonoccupational health care, as  
18 described in Section 4616.7, all medical treatment, utilization  
19 review of medical treatment, access to medical treatment, and  
20 other medical treatment issues shall be governed by the  
21 applicable provisions of the Insurance Code.

22 (5) The insurer may require prior authorization of any  
23 nonemergency treatment or diagnostic service and may conduct  
24 reasonably necessary utilization review pursuant to Section 4610.

25 (6) The maximum percentage of all employees who are  
26 covered under paragraph (1) that may be predesignated at any  
27 time in the state is 7 percent.

28 (7) If any court finds that any portion of this subdivision is  
29 invalid or in violation of any state or federal law, then this  
30 subdivision shall be inoperative.

31 (8) The division shall conduct an evaluation of this program  
32 and present its findings to the Governor and the Legislature on or  
33 before March 1, 2006.

34 (9) This subdivision shall remain in effect only until April 30,  
35 2007, and as of that date is repealed, unless a later enacted  
36 statute, that is enacted before April 30, 2007, deletes or extends  
37 that date.

38 (f) (1) When at the request of the employer, the employer's  
39 insurer, the administrative director, the appeals board, or a  
40 workers' compensation administrative law judge, the employee

1 submits to examination by a physician, he or she shall be entitled  
2 to receive, in addition to all other benefits herein provided, all  
3 reasonable expenses of transportation, meals, and lodging  
4 incident to reporting for the examination, together with one day  
5 of temporary disability indemnity for each day of wages lost in  
6 submitting to the examination.

7 (2) Regardless of the date of injury, “reasonable expenses of  
8 transportation” includes mileage fees from the employee’s home  
9 to the place of the examination and back at the rate of twenty-one  
10 cents (\$0.21) a mile or the mileage rate adopted by the Director  
11 of the Department of Personnel Administration pursuant to  
12 Section 19820 of the Government Code, whichever is higher,  
13 plus any bridge tolls. The mileage and tolls shall be paid to the  
14 employee at the time he or she is given notification of the time  
15 and place of the examination.

16 (g) When at the request of the employer, the employer’s  
17 insurer, the administrative director, the appeals board, or a  
18 workers’ compensation administrative law judge, an employee  
19 submits to examination by a physician and the employee does not  
20 proficiently speak or understand the English language, he or she  
21 shall be entitled to the services of a qualified interpreter in  
22 accordance with conditions and a fee schedule prescribed by the  
23 administrative director. These services shall be provided by the  
24 employer. For purposes of this section, “qualified interpreter”  
25 means a language interpreter certified, or deemed certified,  
26 pursuant to Article 8 (commencing with Section 11435.05) of  
27 Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566  
28 of, the Government Code.